

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Michael D. Barnes
DOCKET NO.: 1048.1
SERIAL NO.: 10/758,763
CONFIRMATION NO.: 6409
FILED: January 16, 2004
ART UNIT: 1732
EXAMINER: Wollschlager, Jeffrey Michael
TITLE: Photonic Polymer-Blend Structures and Method for Making

Response to Office Action and Express Abandonment

Commissioner for Patents
Mail Stop Non-Fee Amendment
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This response is submitted in response to the office action dated November 21, 2006. Examiner rejected claims 1-6 under 35 USC 101 as being identical to claims 11-16 of U.S. Patent No. 6,756,117. Applicant has reviewed the claims and acknowledges that the Examiner is correct. However, it behooves applicant to record the facts in this matter in order to protect the rights of the applicant and assignee of record, particularly with respect to the claims affected by unusual circumstances.

In applicant's file wrapper for the parent application (Serial No. 10/325,112), there is a record of a telephone conference dated December 12, 2003 wherein Examiner Kiliman restricted the claims to one of two groups: Group I (claims 1-10) and Group II (claims 11-16). Patent

agent of record Shelley Stafford elected Group I without traverse. The restriction requirement and election were apparently never consummated. The parent application record further contains a Notice of Allowability directed to all claims 1-16 with reasons given therefor.

Applicant filed the presently pending divisional application in good faith, since the election was made without traverse. Signatory agent of record exchanged telephone messages with Examiner on December 12 and 13, 2006. Examiner checked the parent application file at the USPTO, found no record of the restriction requirement, noted the reasons for allowance of claims 1-16, and concluded that all claims in U.S. Patent No. 6,756,117 are valid.

Applicant asserts that claims 1-6 of the present application legally, validly, and enforceably exist as claims in 11-16 of U.S. Patent No. 6,756,117. Therefore, applicant expressly abandons the present application in favor of claims in 11-16 of U.S. Patent No. 6,756,117.

Respectfully Submitted,

/Joseph A. Marasco/

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